IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.2592 of 2006

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

M/s.Savvy Systems (India) Ltd.,
New No.66 (Old NO.148),
Greams Road, Chennai. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 22.12.2004 in ITA No.1377/Mds/2004 for the assessment year 2000-01 against GI No. WSA-258/AAECS3281L/01-02 dated 20.9.2004 on the file of the Income Tax Officer,. Company Ward VI (1), Chennai -34 and C.No.3033/23/III/2003-04 dated 16.3.04 on the file of the Office of the Commissioner of Income Tax, Chennai-III, Chennai-34 and PAN/GIR NO.WSa258/AAECS3281L order dated 18.2.2003 for the assessment year 2001-02 on the file of the Income Tax Officer, company ward VI (1) chennai.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1377/Mds/2004 dated 22.12.2004.

2. The Revenue is the appellant. The assessment year involved is 2000-01. The assessee is in the business of export of computer software. The assessing officer, accepted the return filed by the assessee and while computing the deduction under section 10B, the assessing officer proceeded as if the domestic

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turnover would form part of export turnover and the domestic profit forms part of the export profit on the ground that the domestic turnover is less than 25% of the sales. Finding that the assessment order was erroneous and prejudicial to the interest of the Revenue, the Commissioner revised the order under Section 263, pursuant to which, an order under Section 154 of the Act came to be passed reducing the benefit of deduction under Section 10B of the Act. Aggrieved by the revision order of the Commissioner, the assessee preferred an appeal before the Income-tax Appellate Tribunal and the Tribunal held that where the assessee's domestic sale had not exceeded 25% of the total sales, then for the purpose of the deduction under Section 10B,t he domestic turnover forms part of the export turnover and the domestic profit forms part of the export profit and accordingly, held the issue in favour of the assessee.

3. Aggrieved by the same, the Revenue has preferred this appeal raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that for the purpose of the deduction under section 10B the domestic turnover forms part of the export turnover as per constitutional iv to expln. 2 to sec. 10B ?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in relying on the second proviso to section 10B(1) for the purpose of deciding the issue relating to the export turnover ? "

4. In the operative portion of the order of the Tribunal, we find that the domestic turnover of the sales does not exceed 25% of the total sales and it is not in dispute that the domestic turnover was less than 25% of the total sales, thus, fully satisfying the requirements as provided in the second proviso to sub-section (1) of section 10B at the relevant period of time, which reads as under:

> " Provided further that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software."

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In view of the above, we find no question of law much less substantial question of law that arises for our consideration. Accordingly, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan,
Besant Nagar,
Chennai Bench "B"., Chennai-40.

2.The Commissioner of Income-Tax, Chennai.34

3.The Income-tax Officer,
Company Ward-VI(1),
Chennai.

4. The Commissioner of Income Tax (Chennai III)
Chennai.

1 cc to M/s. Pushya Sitaraman, Sr. Standing Counsel Sr. 55780

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